



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 3 and 4

RIN 2900-AO96

Schedule for Rating Disabilities – Mental Disorders and Definition of Psychosis for
Certain VA Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, without change, an interim final rule amending its Schedule for Rating Disabilities (VASRD) dealing with mental disorders and its adjudication regulations that define the term “psychosis.” Outdated references are replaced with references to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). Nomenclature used to refer to certain mental disorders is amended to conform to DSM-5. This rule also provides clarification of the applicability date.

DATES: Effective Date: This rule is effective on [insert date of publication in the FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [insert date of publication in the FEDERAL REGISTER].

Applicability Date: The provisions of this final rule shall apply to all applications for benefits that are received by VA or that are pending before the agency of original jurisdiction on or after August 4, 2014. The Secretary does not intend for the provisions of this final rule to apply to claims that were pending before the Board of Veterans' Appeals (i.e., certified for appeal to the Board of Veterans' Appeals on or before August 4, 2014), the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on August 4, 2014, even if such claims are subsequently remanded to the agency of original jurisdiction.

FOR FURTHER INFORMATION CONTACT: Ioulia Vvedenskaya, Medical Officer, VASRD Regulations Staff (211C), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VA published an interim final rule in the Federal Register at 79 FR 45093 on August 4, 2014, to amend the portion of the VASRD dealing with mental disorders and its adjudication regulations which define the term "psychosis." The DSM-5, which was published by the American Psychiatric Association in May 2013, provides a common language and standard criteria for the classification of mental disorders. The amendments in the interim final rule deleted outdated references to the DSM-IV and DSM-IV-TR and replaced them with references to DSM-5. Additionally, the rulemaking updated the nomenclature in the VASRD to refer to certain mental disorders to conform to DSM-5 terminology.

VA provided a 60-day public comment period, which ended on October 3, 2014, and received no public comments in response to the publication of this interim final rule. One non-comment was received from a VA employee suggesting additional changes to Part 3 regulations which are outside the scope of this rulemaking. No changes were made as a result of the non-comment. Although no comments were received on this issue, in reviewing the interim final rule to prepare for publication of the final rule, VA determined that the applicability date should be clarified. For the reasons set forth in the interim final rule and below, we are adopting the interim final rule as final, with changes to the applicability date, as explained below.

Upon further review, VA has amended the language of the applicability date to ensure clarity and avoid potential misapplication of this final rule. In the interim final rule, VA stated that the provisions applied to all applications for benefits that are received by VA or that are pending before the agency of original jurisdiction on or after the effective date of the interim final rule. For clarity, this language has been amended to specify that the provisions of the final rule apply to claims received by VA or pending before the agency of original jurisdiction as of August 4, 2014, the date the interim final rule was published in the Federal Register and became effective. Similarly, the interim final rule stated that the provisions did not apply to claims that were certified for appeal to the Board of Veterans' Appeals or were pending before the Board of Veterans' Appeals, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit. For clarity, this language has been amended to specify that the provisions of the final rule do not apply to claims that were pending before the Board of Veterans' Appeals (i.e., certified for appeal to the Board of

Veterans' Appeals on or before August 4, 2014), the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on August 4, 2014, even if such claims are subsequently remanded to the agency of original jurisdiction. No other changes or amendments to the applicability date language are made.

Incorporation by Reference

The Director of the Federal Register approves the incorporation by reference of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) (2013) for the purposes of 38 CFR 4.125(a) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Psychiatric Association, 1000 Wilson Boulevard, Arlington, VA 22209-3901. You may inspect a copy at the Office of Regulation Policy and Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420 or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Although §§ 3.384 and 4.130 also mention DSM-5, incorporation by reference is not required because those sections merely refer to the DSM-5 as a source and not as a requirement. In contrast, § 4.125 requires claims adjudicators to use the DSM-5.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), VA found that there was good cause to dispense with advance public notice and opportunity to comment on the interim final rule and good cause to publish that rule with an immediate effective date. The interim final rule was necessary to implement immediately the Secretary's decision that health professionals must utilize the latest diagnostic standards – the DSM-5 – the same standards used to diagnose and treat veterans with mental disorders – to adjudicate claims pertaining to mental disorders. Delay in the implementation of this rule would have been impracticable, unnecessary, and contrary to public interest, particularly to veterans.

It would have been impracticable to provide opportunity for prior notice and comment for this rulemaking because a delay in implementation would have required the Veterans Health Administration (VHA) to continue to diagnose mental disorders under two versions of the DSM until this regulation became effective, one for clinical purposes (under DSM-5) and one for compensation purposes (under DSM-IV). It would have been unnecessary because it was inevitable that the Veterans Benefits Administration (VBA) would adopt the DSM-5 for diagnostic purposes because VHA clinicians have a professional duty as licensed medical practitioners to use the most current medical guidelines, in this case the DSM-5. It would have been contrary to the public interest because a delay in VBA's transition to the DSM-5 would have denied veterans timely access to benefits based on current and accurate clinical diagnostic criteria already adopted by the psychiatric community.

The change to the references from DSM-IV and DSM-IV-TR to DSM-5 in VBA's adjudication regulations did not present a change in how mental disorders are evaluated under the VASRD, nor were any disorders removed from the VASRD. VA has reviewed the contents of the DSM-5 to ensure that, while some disabilities have been renamed, re-categorized, or consolidated into another diagnosis, all mental disorders currently listed in the VASRD are accounted for. In cases of periodic updates of clinical guidelines and medical terminology used by the medical community, such as DSM-5, VA has no authority to comment, challenge, or change the content, terminology, or nomenclature based on public comment. VA's use of the DSM-5 is limited to conforming to the most current medical standards and practices in diagnosing mental disabilities.

For the foregoing reasons, and as explained in further detail in the interim final rule, the Secretary issued the rule as an interim final rule with immediate effect.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," which requires review by

the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will not affect any small entities. Only certain VA beneficiaries could be directly affected. Therefore, pursuant to

5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.009, Veterans Medical Care Benefits; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on March 12, 2015, for publication.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Part 4

Disability benefits, Incorporation by reference, Pensions, Veterans.

Dated: March 13, 2015.

Jeffrey M. Martin,
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Office of the General Counsel,
U.S. Department of Veterans Affairs.

Based on the rationale set forth in the interim final rule published in the Federal Register at 79 FR 45093 on August 4, 2014, and in this document, VA is adopting the provisions of the interim final rule as a final rule without change.

[FR Doc. 2015-06212 Filed: 3/18/2015 08:45 am; Publication Date: 3/19/2015]